

## **REMARKS**

Claims 12-14, 16-26, 30-46, 52, 53, 55-61, and 78-81 were pending and presented for examination.<sup>1</sup> In an Office Action dated May 31, 2007, claims 12-14, 16-21, 30-46, 52, 53, 58-61, 78, and 80 were rejected.<sup>2</sup> Applicants thank the Examiner for examination of the claims pending in this application and address the Examiner's comments below.

Applicants note that the Examiner now considers claims 22-26, 56-57, 79, and 81 to be allowable if rewritten in independent form.

In view of the Remarks that follow, Applicants respectfully request that Examiner reconsider all outstanding objections and rejections, and withdraw them.

### **Response to Rejections Under § 103**

Claims 12-14, 16, 18, 21, 30-38, 44-46, 52, 53, 55, 58-61, 78, and 80 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Kawamata, U.S. Patent No. 6,334,140, in view of Zellner, U.S. Patent No. 7,050,445. Additionally, claims 17, 19, 20, and 39-43 stand rejected under §103(a) as allegedly being unpatentable over Kawamata and Zellner further in view of Aronson, U.S. Patent No. 6,654,787. These rejections are traversed together.

Representative independent claim 12 recites:

A method for controlling distribution of network communications via a communications network, the method comprising:  
*sampling and classifying a subset of network communications according to sender in order to determine, for every sender, a level of network communications having a certain characteristic;*

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<sup>1</sup> Claims 1, 3-6, 15, 47-51, and 62-76 were pending but withdrawn as a result of the restriction requirement of February 12, 2007.

<sup>2</sup> The Office Action Summary states that claims 12-14, 16, 18, 21, 30-38, 44-46, 52, 53, 55, 58-61, 78, and 80 are rejected, but this fails to account for the additional rejections of claims 17, 19, 20, and 39-43 on page 14 of the Office Action.

- identifying a plurality of subsequent network communications, each being intended for delivery to a respective recipient and each having a respective sender;
- determining a priority value for each of the plurality of subsequent network communications as a function of the level previously determined for the communication's sender; and
- causing delivery of the plurality of subsequent network communications to the respective recipients in an order corresponding to the respective priority values, wherein certain of the plurality of network communications having a relatively high priority value are delivered before certain of the plurality of network communications having a relatively low priority value.

The other independent claims—i.e. claims 13, 14, 16, 21, 30, 52, 55, and 78—all recite similar sampling-related features. For example, claim 14 recites the same sampling-related limitations as claim 12, but for a network path, rather than for a sender.

Thus, the claimed invention involves *sampling* network communications for a given source, such as a sender or network path, in order to determine for each source a level of network communications having a certain characteristic, such as the presence of a virus or an undeliverable message. This characteristic level can then in turn be used to determine a priority value for subsequent network communications from the source. The priority value can control whether to take certain actions, such as delaying allocation of network connection for the network communication until after the delivery of a communication of higher priority. This beneficially allows, for example, the suppression of spam or other undesirable messages close to their source, thus freeing system resources of recipient and intermediary machines from the need to process such messages. The use of sampling of network communications for a given sender or network path allows for computationally inexpensive determination of the characteristic level.

The Examiner correctly notes that Kawamata fails to disclose sampling and classifying a subset of network communications and therefore relies on Zellner for this feature. However, Zellner in fact also fails to disclose the claimed sampling. Zellner discloses a

wireless communication system for allocating limited network access according to designated transaction priorities (Abstract, Summary). Zellner has no need of sampling and classifying a subset of network communications because the designated transaction priorities are dependent on characteristics of the network communications known *a priori*, such as the level of service for which the customer has paid. Since Zellner prioritizes based on factors already known, it neither teaches nor suggests sampling a subset of network communications to determine characteristics. In particular, note that cited passage 4:21-38 does not disclose sampling and classifying a subset of network communications, but rather discloses that a user may obtain a priority higher than the default for a given message by paying a higher fee for that particular message. Such an action is determined directly by the user's specified choice and in no way requires the use of sampling.

Nor does Aronson, cited as disclosing features relating to viruses and spam, remedy the deficiencies of Kawamata and Zellner. As previously noted in the response to the Office Action of September 22, 2006 and implicitly acknowledged by the Examiner, who instead cited new references, Aronson discloses a server for filtering email messages on behalf of a client, but fails to disclose sampling network communications.

Thus, independent claims 12, 13, 14, 16, 21, 30, 52, 55, and 78 are patentable over Kawamata, Zellner, and Aronson, taken either individually or in combination. The dependent claims depend, either directly, or indirectly, from claims 12, 13, 14, 16, 21, 30, 52, 55, and 78 and recite additional patentably distinguishable features and limitations, and are thus patentable over Kawamata, Zellner, and Aronson for at least the reasons set forth above.

Based on the above remarks, Applicants respectfully submit that for at least these reasons claims 12-14, 16-21, 30-46, 52, 53, 58-61, 78, and 80 are patentably distinguishable over the cited references and like claims 22-26, 56-57, 79, and 81 recite allowable subject

matter. Therefore, Applicants respectfully request that Examiner reconsider the rejections, and withdraw them.

Applicants respectfully invite Examiner to contact Applicants' representative at the number provided below if Examiner believes it will help expedite furtherance of this application.

Respectfully submitted,  
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